

APPEAL NO. 162270
FILED DECEMBER 22, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 28, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the decedent did not sustain a compensable injury on (date of injury), resulting in his death.

The appellant (claimant beneficiary) appealed the hearing officer's determination as being contrary to the preponderance of the evidence and arguing that the claimant beneficiary's expert witness, (Dr. H) is qualified to render an expert opinion in this case regarding causation. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and remanded.

The decedent, a software engineer working in (city), Texas, fainted on (date of injury), while in, China working to effect a merger of the employer's office in that location with its office in (city). The decedent received treatment, including surgical intervention, in China and was diagnosed with intracranial hemorrhage and grade III astrocytoma brain tumor. The decedent was thereafter transferred back to the United States and received treatment in (city 2) and (city) where he died on October 28, 2015. The death certificate listed the chain of events causing death as: 1) astrocytoma of the brain; 2) intracranial hemorrhage; and 3) respiratory failure.

In support of her position that the decedent's death resulted from a compensable injury, including work-related stress which exacerbated his hypertension and caused the intracranial hemorrhage, the claimant beneficiary relied upon the report and testimony of Dr. H, a cancer research biologist who holds a Ph.D. in biochemistry and biophysics and is engaged in investigating the etiology and treatment of brain tumors.

In the Discussion section of her decision, the hearing officer wrote:

[The] [c]arrier objected to the testimony of [Dr. H] as not qualifying as an expert in this matter. [The] [c]arrier argued that a Ph.D., not a licensed medical doctor, was unqualified to offer a medical opinion as to causation.

[Dr. H] is qualified to testify as to his research into astrocytoma; however, he was not qualified to offer an opinion as to causation regarding hypertension, stress, and intracranial hemorrhage.

We disagree. We have previously held that medical evidence may be generated by a number of sources other than the individuals who are defined as “doctors” in Section 401.011(17). See Appeals Panel Decision (APD) 150372, decided April 27, 2015, and cases cited therein. Dr. H’s narrative and testimony should not be discounted as an expert medical opinion concerning causation merely because a Ph.D. is not listed under the definition of “doctor” in Section 401.011(17). As noted above, Dr. H is a cancer research biologist with a Ph.D. in biochemistry and biophysics investigating the etiology and treatment of brain tumors. The weight to be given such medical evidence is within the province of the hearing officer. APD 990803, decided June 2, 1999.

The hearing officer in this case erred in failing to consider Dr. H’s report and testimony concerning causation merely because Dr. H is a Ph.D. and not a “doctor” as defined in Section 401.011(17). We reverse the hearing officer’s decision and remand the issue of whether the decedent sustained a compensable injury on (date of injury), resulting in his death to the hearing officer to make findings of fact, conclusions of law, and enter a decision which are supported by the evidence. The hearing officer is to consider the testimony and narrative of Dr. H concerning causation. No new evidentiary hearing on remand is necessary.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers’ Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge